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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,069

02/13/2006

Paul Richard Hayes-Pankhurst

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EXAMINER

BUSHEY, CHARLES S

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

11/07/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,069	<b>Applicant(s)</b> HAYES-PANKHURST ET AL.	
	<b>Examiner</b> Scott Bushey	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-11,22 and 24 is/are rejected.
- 7) ☒ Claim(s) 4,5,12-21 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-13-06</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: On page 1 of the specification, applicant should insert the reference to the prior filed applications in the priority chain.

Appropriate correction is required.

### ***Claim Objections***

2. Claim 4 is objected to because of the following informalities: In line 3 of claim 4, the term "In" should not be capitalized. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6, as currently recited, is written in multiple sentence form, Which renders the claims vague and indefinite.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-3, 9-11, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pai.

Pai (Figs. 1, 3, and 4; col. 2, lines 36-41, 58-68; col. 3, lines 18-23) substantially discloses applicant's invention as recited by instant claims 1-3, 9-11, 22, and 24, except for the air moving means being in the form of a fan. Pai discloses an air pump, which is a broad term encompassing a fan, blower or compressor. Applicant should note Fig. 4 of the reference, wherein it should be noted that the apertured cap, which rotates with the table (8), forms the flow controller (note 71 in Fig. 4), which controls air flow through a first or second flow path to disperse a first or second fragrance from the device. Applicant should also note that the arm means (33) shown in Fig. 3 of the reference provide actuation of the controller to control movement of the cap (7) to allow alternative dispersal of first and second fragrances along first and second flow paths. It would have been obvious for an artisan at the time of the invention, to provide the generically disclosed air pump of Pai in the form of a well known fan, since such is notoriously well

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known within the art as convenient means for transporting airflow along a chosen air path.

***Allowable Subject Matter***

8. Claims 4, 5, 12-21, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record fails to disclose or suggest the reversible fan in conjunction with a flow controller movable by an actuator between first and second positions to control airflow along first and second airflow paths to release first and second fragrances, as recited by instant claim 4. The prior art of record also fails to disclose or suggest the actuator control means in the form as set forth by instant claims 12 and 18. Further, the prior art of record fails to disclose or suggest the fan within a housing having first and second passages leading from the housing chamber to form the first and second airflow paths in conjunction with a flow controller movable by an actuator between first and second positions to control airflow along first and second airflow paths to release first and second fragrances, as recited by instant claim 19. Lastly, the prior art of record fails to disclose or suggest the fan in conjunction with a flow controller movable by an actuator between first and second positions to control airflow along first and second airflow paths to release first and second fragrances, the flow controller being movable by the actuator to at least one position between the first and second positions to provide proportionate increase of both fragrances, as recited by instant claim 23.

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9. Claims 6-8 would be allowable based upon their dependence upon claim 4, if rewritten to overcome the rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is 571 272-1153. The examiner can normally be reached on M-Th 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Scott Bushey  
Primary Examiner  
Art Unit 1797

/S. B./  
11-5-08

/Scott Bushey/  
Primary Examiner, Art Unit 1797